IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Writ Petition No.4692 l990

The Indian Inst of Architects
Maharashtra Chamber Pune ..Petitioners
vs
Pimpri Chinchwad Mun Corpn
and anr ...Respondents
Mr.N.P.Deshpande for petitioner
Mr. D.R.More for respondent no.l
with
Writ Petition No. l830 of l988
Manohar Krishnaji Ranade.. ..petitioner
vs
Pune Mun Corpn Pune and anr.. respondents
Mr. N.P.Deshpande for petitioner
Mr., R.G.Ketkar for responent no.2
Mr. Vijay Patil for respondent no.4
with
Writ Petition No. 5600 of l997
Krishnaji Shankar Tandale... petitioner
vs
Pune Mun Corpn and ors.... respondents
None for petitioner
Mr. R.G.Ketkar for respondent nos.l and 2

CORAM: A.P.SHAH & S.C.DHARMADHIKARI JJ.
Dated 29.ll.2004

P.C:

l. By these writ petitions the petitioners, who are architects, are seeking a declaration that the architects registered under the Architects Act, l972 are not required to obtain licences as architects under the Mumbai Provincial Municipal Corporation Act, l949, hereinafter referred to for brevity's sake as "the MPMC Act", and the byelaws framed thereunder and an injunction restraining the respondent Corporation/s from insisting that the

petitioners should obtain licences under the provisions of the MPMC Act. The petitioners are also seeking a direction to the respondent Corporation/s not to issue licences under Chapter XII of the MPMC Act in favour of any person to do a job which an Architect is supposed to do and who is not registered under the Architects Act.

2. The contention on behalf of the respondent Corporation/s mainly is that the provisions of the Architects Act do not cover the field which is covered by the provisions of section 372 of the MPMC Act and the byelaws framed thereunder and since it is necessary that the respondent Corporation/s should have effective control to deal with the cases of erring architects and in suitable cases to take disciplinary action against them, provisions of the MPMC Act should be harmoniously construed. It is urged that since the MPMC Act is covered by Entry 5 of List II and the Architects Act is referable only to Entry 26 of List III, there is no question of repugnancy between the two statutes. When a law passed by the State Legislature while being substantially within the scope of entries in the State List entrenches upon any of the entries in the Central List,

constitutionality of such law can be upheld by invoking the doctrine of pith and substance, if on an analysis of the provisions of the State Act, it appears that by and large the law falls within the four corners of the State List and the entrenchment, if any is purely incidental or inconsequential. It is also urged that there is nothing in the Architects Act to show that engineers or surveyors possessing necessary qualifications cannot discharge the functions which are also discharged by an Architect registered under the Architects Act.

3. At the outset we may mention that the issue as to whether a Municipal Corporation can regulate licences of Architects after coming into force of the Architects Act is no more resintegra and is fully covered by the decision of the Division Bench in Jaswantsingh vs Municipal Corporation, Aurangabad in Writ Petition No.4 of l985 decided on 3rd July l987. The Division Bench in that case, after examining the provisions of the Architects Act and the MPMC Act, held that in view of the fact that the Architects Act prescribes an exhaustive code the Municipal Corporation constituted under the MPMC Act has no power to ask the architects

registered under the Architects Act to obtain licences for working as architects, M.S.Deshpande J. speaking for the bench observed:

> "7. In Deep Chand V. State of U.P. (AIR 1959 SC 648), where a Five Judges Bench of the Supreme Court had to consider the provisions of Article 254(1) of the Constitution, it was observed as follows :-
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> "This Court in Tika Ramji V. State of Uttar Pradesh, 1956 SCR 393; (5) AIR 1956 SC 676) accepted the said three rules, among others useful guides to test the question of repugnancy. In Zavarbhai Amaidas V. State of Bombay, 1955-1 SCR 799, this Court laid down a similar test. At page 807 (of SCR) it is stated :-
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> 'The principle embodied in Section 107(2) and Article 254(2) is that when there is legislation covering the same ground both by the Centre and by the Provice, both of them being competent to enact the same, the law of the Centre should prevail over that of

the State.'

Repugnancy between two statutes may thus be ascertained on the basis of the following three principles :

(1) Whether there is direct conflict between the two provisions;

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and

(3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

In the present case we have pointed out that law made by Parliament and the law made by State Legislature on the subject of architect occupy the same field and are regulatory. The Architects Act provides for the control of the working of Architects and also the manner in which the cases of mis-conduct may be dealt with. There can be

no doubt that in exhaustive code in respect of this subject has ben laid down by the Architects Act. It would not be open in the face of Central Legislation for the Commissioner under Section 372 of the Corporations Act to refuse to issue licence to an architect under the guise that Respondent No.1 has framed Building Bye-Laws and requires qualifications and experience other than that provided by the Architects Act for issuance of licence. He would not have the power in the face of provisions regulating and controlling the conduct of the architects under the Architects Act to inquire into unfitness, through incompetency, mis-conduct or other grave reason under the guise of the power which purports to have been conferred on him by virtue of Section 372 of the Corporation Act for refusing the licence to an Architect. It is, therefore, difficult to say that the provisions of section 372 of the Corporations Act and the Building Bye-laws which we have noticed can co-exist with the corresponding provisions of the Architects Act of 1972.

9. We have referred to the observations of the Supreme Court in Reghbir Vs. State of Haryana (1981) 4 Supreme Court Cases 210) where it was held that Article 254(1) is applicable only where the State and Central legislations are fully inconsistent and absolutely irreconcilable and while construing provisions of statute, apparent inconsistency of those provisions with the provisions of another related statute should be harmonised and reconciled in the light of the object and purpose of the legislation in question. But having regard to the objects and reasons of the Architects Act to which we have made a reference above we find it impossible to countenance the argument that the provisions of Sec. 372 of the Corporation Act can co-exist with those provisions of the Architects Act. Reference was also made to the decision of Supreme Court in the Bar Council of Uttar Pradesh V. The State of U.P. and another (AIR 1973 SC 831). But there the position was not similar to that we have here. It was observed that the question of repugnancy

under Article 254 of the Constitution can only arise in matters where both the Parliament and the State Legislature have legislative competence to pass laws. In other words when the legislative power is located in the Concurrent List the question of repugnancy arises. There the question was about the imposition of stamp duty on the certificate of enrolment under Sec. 22 of the Advocates Act to be issued by the State Bar Council of the State of Uttar Pradesh. The Supreme Court observed that the power flowed from the List II and not List III i.e. the Concurrent List. In the present case, there is no dispute that the State Legislature and Parliament can enact on the subject of architects under item 26 of List III which is in respect of Legal, medical and other professions. Mr.Nawander drew our attention to the provisions of entries 60 and 66 of List II which are in respect of taxes on professions, trades, callings and employments and fees in respect of any of the factors in that list, but not including fees taken in any court. We do not have to consider the effect of these

entries for the purpose of the present petition because the controversy before us is not with regard to the taxes of fees but is about the power of Commissioner under the Corporations Act, in the face of the provisions of the Architects Act, to require the Petitioners to obtain licences. The Bar Council of Uttar Pradesh's case to which reference was made is, therefore, not of any assistance to Respondent no.1.

In the light of our conclusion that the Central Act prescribes an exhaustive code, we do not think that respondent no.l has the power to ask the petitioners to obtain licences for working as Architects".

(emphasis supplied)

4. The Division Bench of the Delhi High Court has taken a similar view in Municipal Corporation of Delhi and ors vs Shri Ramkumar Bharadwaj and ors in LPA no.59 of l975 decided on 2.4.l980. The Division Bench has held as follows:

" The Architects Act, l972 is a special law

dealing with the qualifications to be possessed by persons for being registered as Architects and restricting the terms "Architect" or "registered Architects" to such persons only. Since the possession of a registration certificate under the Architects Act, l972 regarded by Parliament as sufficient qualification for the practice of architect and since all related questions have been dealt with in respect of architects by the said Act, it became unnecessary for the Corporation to do so thereafter. In view of section 502 of the Act, the provisions referred to above which could be construed as authorising the Corporation to regulate the licensing of architects and draughtsman could not be so construed after coming into force of the Architects Act,l972.

It would be sufficient in our view, for the disposal of the writ petitions and the appeals before us, to say that neither the provisions of the Act, nor the provisions of any bye-laws made thereunder or any orders issued for the implementation of these

byelaws or any resolutions of these byelaws or any resolutions passed by the Corporation in that respect will affect the persons who are registered under the Architects Act, l972".

(emphasis supplied)

5. Mr.Ketkar and Mr. More appearing for the respondents strenuously contended that under Article 254 of the Constitution the question of repugnancy can arise only with reference to a legislation falling under the Concurrent List. According to the learned counsel Architects Act squarely falls under Entry 26 of the Concurrent List whereas the MPMC Act is not covered by the said Entry but falls under Entry 5 of the List II. Whenever repugnancy between the State and Central legislations is alleged what has to be first examined is whether the two legislations covered or related to the same subject matter. The test for determining the same is to find out the dominant intention of the two legislations. If the dominant intention, i.e. pith and substance of the legislations is different,they cover different subject matters. If the subject matters covered by

the legislations are thus different, then merely because two legislations refer to some allied or cognate subject, they do not cover the same field. Both legislations must be substantially on the same subject to attract Article 254. In this connection the learned counsel placed strong reliance on the observations of P.B.Sawant J. in Vijay Kumar Sharma vs State of Karnataka, AIR l990 SC 2071 at page 2085:

> "Even otherwise, I am of the view that not to apply the theory of pith and substance when the repugnancy between the two statues is to be considered under Article 254 of the Constitution would be illogical when the same doctrine is applied while considering whether there is an encroachment by the Union or the State Legislature on a subject exclusively reserved for the other. When the legislative encroachment is under consideration the doctrine of pith and substance comes to the aid to validate a legislation which would otherwise be invalid for the very want of legislative competence.When the repugnancy between the two legislations is under consideration,

> what is in issue is whether the provision of the State enactment, though otherwise constitutionally valid,has lost its validity because the Parliament has made a legislatin with a conflicting provision on legislation the same matter.If it is open to resolve the conflict between two entries in different List, viz, the Union and the State List by examining the dominant purpose and therefore the pith and substance of the two legislations there is no reason why the repugnancy between the provisions of the two legislations under different entries in the same List,viz the Concurrent List should not be resolved by scrutinising the same by the same touchstone. What is to be ascertained in each case is whether the legislations are on the same subject matter or not. In both cases the cause of conflict is the apparent identity of the subject matters., The tests for resolving it therefore cannot be different".

6. We are unable to accede to the submissions of the learned counsel. Whatever may be the position before coming into force of the Architects Act,

l972, what we have to consider is whether after coming into force of the Architects Act the Municipal Corporation constituted under the MPMC Act has any power to regulate practice of Architects by the insistence that they must possess licences issued by the Corporations. The architects Act sets out qualifications being possessed by the persons to be registered as architects under the said Act. It also prohibits persons, who do not have such registration from describing themselves as architects and also deal with disciplinary action for misconduct of architects. It is therefore a complete enactment, the effect of which is that a person cannot call himself as an Architect unless he is registered under the said Act. The argument of the learned counsel that the two Acts occupied different legislative fields is not correct. A comparison of the provisions of the two enactments would show that section 372 of the MPMC Act and the Building byelaws made under the said Act, occupy the same field for which provisions have been made in the Architects Act, l972. Sub-section (l) of section 35 of the Architects Act makes it clear that any reference in any law for the time being in force to an architect shall be deemed to be a reference to

an architect registered under the said Act and this would show its reach to the provisions of any other enactment for the time being in force in relation to an architect. In the instant case the State law is earlier legislation and the Parliamentary Act of l972 came later and the State legislation contains provisions which are clearly repugnant to the provisions made under the l972 Act. We have therefore no hesitation to hold that in view of this apparent conflict Parliamentary legislation has to prevail and the law made by the State Legislature to the extent of repugnancy becomes void. Therefore we are in respectful agreement with the view taken by the Division Bench that the architects registered under the Architects Act, l972 would not be required to obtain licences under the MPMC Act and the Building Byelaws made thereunder. The respondent Corporation is therefore liable to be restrained from insisting upon the petitioners to obtain licences under the MPMC Act.

7. The next issue is whether the engineers or surveyors possessing necessary qualifications can discharge functions which are also discharged by an architect under the Architects Act, 1972? The

Statement of Objects and Reasons for the Bill submitted for the passing of Architects Act, 1972 itself clarifies that engineers are not forbidden from designing plans for buildings and that the design, supervision and construction of buildings is not an exclusive responsibility of the architects. The Statement of Objects and Reasons states that a large variety of buildings many of extreme complexity and magnitude like multi-storeyed, office buildings, factory buildings, residential houses are being constructed each year and with this increase in building activity many unqualified persons calling themselves as architects are undertaking the construction of buildings which are uneconomical and quite frequently are unsafe, thus bringing into disrepute the profession of architects. Various organisations including the Indian Institute of Architects have repeatedly emphasized the need for statutory regulation to protect the general public from unqualified persons working as architects. With the passing of this legislation it will be unlawful for any person to designate himself as architect unless he has the requisite qualifications and experience and is registered under the Act. Clause (3) of the Statement of

Objects and Reasons then recites that, "the legislation protects the title Architects but does not make the design supervision and construction of buildings as an exclusive responsibility of Architects. Other professionals like Engineers will be free to engage themselves in the normal vocation in respect of building construction works provided that they do not style themselves as Architects." The Goa Bench of this court has considered this issue although in slightly different context in Writ Petition No.123/1985 (Smt.Meghana A.P. Desai Vs. Union of India and others) and companion Writ Petitions decided on l2.8.l986. The question before the Division Bench was whether the Corporation was right in directing the petitioner to resubmit the application and plans for construction of a house at Margao signed by an Architect registered with it and not by an Engineer. The Bench after examining the scheme of the Architects Act held as follows:-

> " "The Statement of Objects and Reasons for the Bill of Architect Act, l972, will in our view be helpful to our earlier for the correct answer to the said question for item having stated in its clause (l) that-- A

large variety of buildings many of extreme complexity and magnitude like Multi-storeyed. Office Building, Factory Buildings, Residential Houses are being constructed each year with this increase in building activity many unqualified persons calling themselves as Architects are undertaking the construction of buildings which are uneconomical and quite frequently are unsafe, thus bringing into disrepute the profession of Architects. Various organisations including the Indian Institute of Archjitecs, having repeatedly emphasized the need for statuotry regulation to protect the general public from unqualified persons working as Architects with the passing of this legislation it will be unlawful for anmy person to designate himself as Architect unless he has the requisite qualifications and experience and is registered under the Act. The legislature generally on the same lines as similar Acts in other countries it is clarified in clause (3) that "the legislation protects the title Architects but does not make the design supervision and construction of buildings as

an exclusive responsibility of Architects. Other professionals like Engineers will be free to engage themselves in the normal vocation in respect of building construction works provided that they do not style themselves as Architects". It would thus appear from the combined reading of the aforementioned Clauses (1) and (3) that actually there is no substantial differentiation in the technical qualifications of Architects and Engineers and both such professionals are qualified and have the necessary knowledge and expertise to engage themselves in building construction and development activities.

9. Such interference is in our view corroborated by the fact that it seems that the Civil Engineering Courses includes subjects relating to construction and development for it is apparent from the ordinances and regulations relating to examinations in the Civil Engineering Course for the years 1982-85 made by the University of Bombay that such subjects are prescribed in the respective syllabus. In fact we find

from the exhibits prepared in that respect by the petitioner Vikas Vithal Desai that there are papers for construction, testing of materials, building and drawing, surveying, building design and drawing traffic engineering and control and finally architectural town planning. These papers are prescribed for the examinations in semester III to VII.

10. In the light of the above it would appear that both the Courses of Architects and Civil Engineers have the basic qualifications required for engaging themselves in activities of construction and development. It was however contended by Mr.Jaques the learned counsel appearing for the third respondent that it is not so. He produced an ordinance of the Bombay University prescribing the examination for several semesters in the course of Architecture. He minutely took us through the said ordinance and submitted that this clear that the qualifications of the Architects are by far more specialized and better than those the Engineers. In so far

as the construction and development activities are concerned he submitted that designing is taught in all the years of the course and examinations in respect of such subjects are on minute details of it. Therefore according to the learned counsel it is not possible to say that only because some skeleton knowledge of the said subjects is given in the course of Civil Engineering the Civil Engineers are duly qualified to proceed with activities of construction and development. He contended that the designing is a very specialized subject and such designing will not be properly done by an Engineer just like and in the same manner as an Architect will not be qualified to proceed with actual construction work of a building. We are however unable to agree with the learned Counsel for we find that the papers prescribes in respect of building construction designing and drawing town planning and development in the Engineering Course by implication show that the latter course gives the required technical knowledge not only for the construction work but also for development. Besides we may

point out that the town Planning Authorities are not bound to accept all the plans which are submitted to them for development of the land or for construction. This being so we lad to find any intelligible differentia distinguishing the Architects from the Engineers which justifies the classification made in the Note of Rule 13 and in any event we find no rational nexus between the said classification and the object to be achieved i.e. a proper disciplined and adequate development. The said classification being therefore unreasonable arbitrary and discriminatory is liable to be struck down it was however contended by Mr.Nadkarni that the Engineers and Architects are not similarly situated and in addition the classification is made between Architects and non Architects such classification being entirely permissible as can be seen from the decision of the Supreme Court in Sakhawant Ali V. State of Orissa (AIR 1995 C 166). The learned counsel further contended that Article 14 forbids class legislation but does not forbid possible classification for the purposes of legislation in the present

case he added the classification was made to get a proper development of the land and proper construction and by requiring that the plans for development should be signed and submitted only by an Architect it is not possible to say that such classification is unreasonable and arbitrary. The learned counsel is entirely right in his submission that Article 14 forbids class legislation but does not forbid reasonable classification for the purposes of legislation. But as the Supreme Court observed in Sakhawant Acts case (above), such classification cannot be arbitrary but must rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect of which the classification is made. We already mentioned that it flows from the preamble and the scheme of the Town Planning Act that the scope thereof is to have a proper and adequate development and planning. We also mentioned that in our view there is no substantial difference in the qualifications of Engineers and Architects in so far as the development and construction activities are

> concerned. In these circumstances therefore the classification made is not reasonable and justified wrongly separating the Engineers from the Architects for the aforesaid purpose."
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> (emphasis supplied)

8. In the above circumstances we are not inclined to accept the case of the petitioners that the Architects Act restricts practice of architect to persons registered under the said Act. Therefore qualified engineers who cannot themselves call as Architects may still be free to do the work which is ordinarily done by the Architects and it would be open for the Corporations to regulate licensing in favour of such qualified engineers.

9. In the result, petitions are partly allowed and it is declared that the architects registered under the Architects Act, l972 would not be required to obtain licences under the MPMC Act and byelaws made thereunder and the respondent Corporations are restrained from insisting upon the Architects for obtaining such licences. Petitions are disposed of accordingly with no order as to costs.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE FCJURISDICTION

Writ Petition No. 4692 of l990 and ors

Date of Judgment: 29th November, 2004

For approval and signature of:

The Hon'ble Mr.A.P.SHAH J.

The Hon'ble Mr.S.C DHARMADHIKARI J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?

2. Whether to be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?